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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: JAN BYRLA ET AL.

Serial No.: 09/973,953 Group Art Unit: 3677

Filed: OCTOBER 11, 2001 Examiner: ESTREMSKY, Gary W.

Title: VEHICLE HAVING A LUMINOUS UNLOCKING HANDLE
AND METHOD OF MAKING SAID HANDLE

APPEAL BRIEF

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Real Party in Interest

The real party in interest is DaimlerChrysler AG, D-70546 Stuttgart, Germany, by virtue of an assignment recorded in the U.S. Patent and Trademark Office assignment records at reel 012431, frame 0017.

Related Appeals and Interferences

No interferences or other appeals which would affect, be affected by, or have a bearing on a decision in this appeal are known.

Status of Claims

Claims 1-29 are pending in this application, are rejected, and are now appealed. An Appendix containing a copy of claims 1-29 is attached to this Appeal Brief.

Status of Amendments

An Amendment After Final Rejection is being filed together with this Appeal Brief in order to correct informalities appearing in claims 9-12. No other amendment subsequent to the final rejection set forth in the Office Action dated February 26, 2003 (Paper No. 7) has been filed. The After Final Response filed July 28, 2003, included no amendments.

Summary of Invention

A concise explanation of the invention will now be provided. This explanation refers, by way of example only and without intending to limit the claims, to certain drawing figures and to paragraph and line numbers of the specification of this application.

A motor vehicle passenger car 1 has an unlocking handle 3 with a luminous construction arranged in a vehicle interior formed by a trunk 2 (see paragraph 25, lines 1-3). The unlocking handle 3 provides for opening operation of a lock (not shown) of a closing element of a vehicle interior space defined by the trunk 2 (see, for example, paragraph 25, lines 3-5). The unlocking handle 3 has a basic body 7 coupled with the lock (see paragraph 30, lines 1-3). A luminous body 6 is mounted on the basic body 7 (see paragraph 30, lines 1-3) and is made of a luminous material (see paragraph 29, lines 2-4). As best illustrated in Figure 4, the luminous body 6 can be fitted onto the basic body 7 by a dovetail guide 10 (see paragraph 33, lines 1-4). As best shown in Figure 3, the luminous body 6 may be secured on the basic body 7 by means of a detent connection 11 (see paragraph 33, lines 5-8).

The luminous body 6 may consist of a luminescent crystal mixture which is either mixed with a transparent plastic material or embedded in the material (see paragraph 29, lines 4-8).

Illuminating devices 14 may additionally be provided so as to permit an illumination of the luminous body 6 (see Figure 2 and paragraph 32, lines 1-3). A control of the vehicle switches on these illumination devices 14 together with

an interior illumination (not shown) and/or a control panel illumination (not shown)(see paragraph 32, lines 3-6).

As illustrated in Figure 1, the unlocking handle 3 is arranged in the trunk of the vehicle and is used for unlocking a lock (not shown) of a rear trunk lid 4 (see paragraph 25, lines 1-5).

A method of making the unlocking handle 3 includes forming the basic handle body 7 of non-luminous material and connecting the luminous body 6 made of luminous material to the basic body 7. The invention, therefore, provides an unlocking handle constructed of the basic body 7 and the luminous body 6, each of which is optimized with respect to its function (see, for example, paragraph 10, lines 1-3). It is thus possible to produce the luminous body 6 of a material which has a particularly intensive and lasting luminous effect and yet which does not have to be suitable for a use as a handle, since the actual handle function is taken over by the basic body 7 which is coupled in a suitable manner, such as by a Bowden cable, with a lock (see, for example, paragraph 10, lines 3-9).

Issues

Section 3 of the Advisory Action dated August 12, 2003 (Paper No. 10) indicates that the rejection of claims 1, 13, 19, 25, 28, and 29 as being anticipated by U.S. Patent 5,445,326 to Ferro et al. is withdrawn. It is presumed that the rejections of claims 5 and 16 (which depend on independent claim 1), claim 22 (which depends on independent claim 19), and claim 26 (which depends on independent claim 25) as being unpatentable, solely or partially based on the Ferro et al. patent disclosure, are also withdrawn. Accordingly, the following issues are presented for review.

1. Whether claim 28 is properly rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

2. Whether claims 1, 2, 5, 6, 9, 10, 12-14, 16-20, and 22-29 are unpatentable over U.S. Patent 6,086,131 to Bingle et al. in view of U.S. Patent 1,762,447 to Lowes.

3. Whether claims 3, 4, 7, 8, 11, 15, and 21 are unpatentable over the Bingle et al. and Lowes patents in view of U.S. Patent 5,088,781 to Ono et al.

Grouping of Claims

With respect to issue 2 above, claims 1, 2, 9, 10, 12-14, 16-20, and 25-29 stand or fall together. Claims 5, 6, and 22-24 are believed to be separately patentable, however, and do not stand or fall together with the other claims mentioned.

With respect to issue 3 above, claims 3, 4, 11, 15, and 21 stand or fall together. Claims 7 and 8 are believed to be separately patentable, however, and do not stand or fall together with claims 3, 4, 11, 15, and 21.

Argument

I. The rejection of claim 28 under 35 U.S.C. §112, second paragraph, is erroneous. The Examiner states that "it is not clear if or how the limitation further defines the claimed method whereby the scope of the claim is rendered indefinite." Claim 28 further defines the vehicle interior space cover of claims 25 and 26 by specifying that the interior space cover "is a passenger vehicle trunk lid." Claim 28 also further defines the handle of claims 25 and 26 by specifying that the handle is "disposable inside a trunk space covered by the trunk lid." 35 U.S.C. §112, second paragraph, does not preclude further defining structure included in one method claim by way of another, dependent, method claim. The rejection of claim 28 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention is erroneous and should be reversed.

II. The rejection of claims 1, 2, 9, 10, 12-14, 16-20, and 26-29 as being unpatentable over the Bingle et al. and Lowes patents is erroneous. In section 9

of the Office Action dated February 26, 2003, the Examiner acknowledges that the Bingle et al. patent does not teach a "basic body" and a "luminous body mounted thereon." It is thus acknowledged by the Examiner that the Bingle et al. patent does not disclose (a) a passenger car having an unlocking handle, arranged for opening operation of a lock, which "has a basic body coupled with the lock and a luminous body which is mounted thereon and is made of a luminous material" as claim 1 defines, (b) an unlocking handle for a vehicle for opening operation of a lock of a closing element "comprising a basic body coupled with the lock, and a luminous body which is mounted thereon and is made of a luminous material" as claim 18 defines, (c) an unlocking handle comprising "a basic body formed of non-luminous material, which basic body in use is coupled with a lock for the cover, and a luminous body made of luminous material and mounted on the basic body" as claim 19 defines, or (d) a method of making an unlocking handle comprising "forming a basic handle body of non-luminous material" and "connecting a luminous body made of luminous material to the basic body" as claim 25 defines.

The Lowes patent discloses a door knob including a transparent member 12 which has a phosphorous coating 15 on its inner face or a similarly treated member engaged against its inner face (see page 1, lines 74-80 of the Lowes patent). Neither the phosphorous coating 15 nor the transparent member 12 of the Lowes door knob is a "luminous body" mounted on or connected to a basic body, and the Lowes patent cannot suggest modifying the Bingle et al. handle so as to incorporate "a luminous body which is mounted" on a basic body as claims 1 and 18 define or "a luminous body made of a luminous material and mounted on" a basic body as claim 19 defines. Similarly, the Lowes patent cannot suggest modifying a method of making the Bingle et al. handle so as to include "connecting a luminous body made of luminous material to" a basic body as claim 25 defines.

The proposed modification to the Bingle et al. safety handle is justified by the Examiner "in order to provide a handle made from a stronger material." Nothing, however, suggests that the Bingle et al. safety handle is made of a

material having inadequate strength, and nothing in the Lowes patent disclosure suggests consideration of handle material strength. The rationale set forth by the Examiner for the modification proposed to the Bingle et al. safety handle is not provided by anything properly relied on by the Examiner and is inappropriate.

For reasons discussed above, the Bingle et al. and Lowes patents, taken as a whole, do not suggest the subject matter defined by claims 1, 18, 19, and 25. Claims 1, 18, 19, and 25 are patentable, and the rejection of claims 1, 18, 19, and 25 under 35 U.S.C. §103 is erroneous and should be reversed. The rejection of dependent claims 2, 9, 10, 12-14, 16, 17, 20, and 26-29 under 35 U.S.C. §103 is also erroneous for the same reasons and should also be reversed.

III. The rejection of dependent claim 23 as being unpatentable over the Bingle et al. and Lowes patents is erroneous for reasons discussed above in connection with claims 19 and 20 as well as the following reasons. Claim 23 depends on claim 20 and further specifies that "the luminous body is secured on the basic body by means of a detent connection." Nothing in either the Bingle et al. patent or the Lowes patent suggests securing a luminous body on a basic body by means of a detent connection. Again, the Examiner acknowledges that the Bingle et al. patent does not teach a "basic body" and a "luminous body mounted thereon," and neither the phosphorous coating 15 nor the transparent member 12 of the Lowes door knob is a luminous body mounted on or connected to a basic body. Certainly, moreover, the phosphorous coating 15 is not "secured on" the transparent member 12 of the Lowes door knob "by means of a detent connection," and the Bingle et al. and Lowes patents, taken as a whole, do not suggest the subject matter defined by claim 23. Even assuming that the rejection of claim 20 discussed above is not erroneous, the rejection of claim 23 under 35 U.S.C. §103 is also erroneous and should be reversed.

IV. The rejection of dependent claims 5, 6, 22, and 24 as being unpatentable over the Bingle et al. and Lowes patents is erroneous for reasons discussed above in connection with claims 1, 2, 19, 20, and 23 as well as the

following reasons. As noted in MPEP §2144.03(A), official notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well known are capable of instant and unquestionable demonstration. The Examiner's apparent conclusion that a luminous body which "consists of a luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein" as claims 5, 6, and 22 define is "well known and within the scope of Lowes '447" does not constitute proper official notice; it is certainly questionable as to whether or not a luminescent crystal mixture mixed with and/or embedded in a transparent plastic material is "within the scope of Lowes '447" as the Examiner asserts. The Lowes patent contemplates using nothing other than a phosphorous coating. Even assuming that the rejections of claims 1, 2, 19, 20, and 23 discussed above are not erroneous, the rejection of claims 5, 6, and 22 under 35 U.S.C. §103 is erroneous and should be reversed.

V. The rejection of claims 3, 4, 11, 15, and 21 as being unpatentable over the Bingle et al., Lowes, and Ono et al. patents is erroneous. The Ono et al. handle structure includes latching pawls 31 and 39 respectively engageable with recess 29 in outer member 21 and opening 9 in lever 1, but does not meet the limitations discussed in section II above. Claims 3, 4, 11, and 15 incorporate all the limitations of claim 1 discussed in section II above, while claim 21 incorporates all the limitations of claim 19 discussed in section II above. It follows that the Bingle et al., Lowes, and Ono et al. patents, taken as a whole, do not suggest the subject matter claimed by claims 3, 4, 11, 15, and 21. The rejection of claims 3, 4, 11, 15, and 21, therefore, is erroneous and should be reversed.

VI. Finally, claim 7 depends on claim 3, while claim 8 depends on claim 4, and the rejection of claims 7 and 8 as being unpatentable over the Bingle et al., Lowes, and Ono et al. patents is erroneous for reasons discussed in section V above. Claims 7 and 8 also include limitations which are the same as those of claims 5 and 6 discussed in section IV above, which limitations are also not met by the additionally applied Ono et al. patent. It follows that the Bingle et al.,

Lowes, and Ono et al. patents, taken as a whole, do not suggest the subject matter claimed by claim 7 or by claim 8. The rejection of claims 7 and 8 is erroneous and should be reversed.

Respectfully submitted,

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Appendix

The claims on appeal are reproduced below. The claim amendments set forth in the Amendment After Final Rejection filed concurrently with this Appeal Brief are included in the claims reproduced below.

1. A passenger car, having an unlocking handle arranged in a vehicle interior for opening operation of a lock of a closing element of a vehicle interior space, said unlocking handle having a luminous construction,
wherein the unlocking handle has a basic body coupled with the lock and a luminous body which is mounted thereon and is made of a luminous material.
2. Vehicle according to Claim 1,
wherein the luminous body is fitted onto the basic body by a dovetail guide.
3. Vehicle according to Claim 1,
wherein the luminous body is secured on the basic body by means of a detent connection.
4. Vehicle according to Claim 2,
wherein the luminous body is secured on the basic body by means of a detent connection.
5. Vehicle according to Claim 1,
wherein the luminous body consists of a luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein.

6. Vehicle according to Claim 2,

wherein the luminous body consists of a luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein.

7. Vehicle according to Claim 3,

wherein the luminous body consists of a luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein.

8. Vehicle according to Claim 4,

wherein the luminous body consists of a luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein.

9. Vehicle according to Claim 1,

wherein illuminating devices are provided which permit an illumination of the luminous body, a control of the vehicle switching on these illuminating devices together with an interior illumination and/or a control panel illumination.

10. Vehicle according to Claim 2,

wherein illuminating devices are provided which permit an illumination of the luminous body, a control of the vehicle switching on these illuminating devices together with an interior illumination and/or a control panel illumination.

11. Vehicle according to Claim 3,

wherein illuminating devices are provided which permit an illumination of the luminous body, a control of the vehicle switching on these illuminating devices together with an interior illumination and/or a control panel illumination.

12. Vehicle according to Claim 5,

wherein illuminating devices are provided which permit an illumination of the luminous body, a control of the vehicle switching on these illuminating devices together with an interior illumination and/or a control panel illumination.

13. Vehicle according to Claim 1,

wherein the unlocking handle is arranged in the trunk of the vehicle and is used for unlocking a lock of a rear trunk lid.

14. Vehicle according to Claim 2,

wherein the unlocking handle is arranged in the trunk of the vehicle and is used for unlocking a lock of a rear trunk lid.

15. Vehicle according to Claim 3,

wherein the unlocking handle is arranged in the trunk of the vehicle and is used for unlocking a lock of a rear trunk lid.

16. Vehicle according to Claim 5,

wherein the unlocking handle is arranged in the trunk of the vehicle and is used for unlocking a lock of a rear trunk lid.

17. Vehicle according to Claim 9,
wherein the unlocking handle is arranged in the trunk of the vehicle and
is used for unlocking a lock of a rear trunk lid.

18. Unlocking handle for a vehicle arranged in a vehicle interior for
opening operation of a lock of a closing element, comprising a basic body coupled
with the lock, and a luminous body which is mounted thereon and is made of a
luminous material.

19. An unlocking handle operable in use to facilitate manual unlocking of
a vehicle interior space cover, comprising:
a basic body formed of non-luminous material, which basic body in use is
coupled with a lock for the cover, and
a luminous body made of luminous material and mounted on the basic
body.

20. An unlocking handle according to claim 19,
wherein the luminous body is fitted onto the basic body by a dovetail
guide.

21. An unlocking handle according to Claim 19,
wherein the luminous body is secured on the basic body by means of a
detent connection.

22. An unlocking handle according to Claim 19,
wherein the luminous body consists of a luminescent crystal mixture
which is mixed with a transparent plastic material and/or is embedded therein.

23. An unlocking handle according to Claim 20,

wherein the luminous body is secured on the basic body by means of a detent connection.

24. An unlocking handle according to Claim 23,

wherein the luminous body consists of a luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein.

25. A method of making an unlocking handle operable in use to facilitate a manual unlocking of a vehicle interior space cover, said method comprising:

forming a basic handle body of non-luminous material and having structural strength for facilitating transfer of manual forces moving said basic body to unlock the space cover, and

connecting a luminous body made of luminous material to the basic body.

26. A method according to claim 25, wherein said connecting includes gluing said luminous body to said basic body.

27. A method according to claim 25, wherein said connecting includes providing a dove-tail protrusion and dove-tail recess on the respective basic body and luminous body and slidably enterengaging said protrusion and recess.

28. A method according to claim 26, wherein said interior space cover is a passenger vehicle trunk lid, said handle being disposable inside a trunk space covered by the trunk lid.

29. A passenger vehicle interior trunk lock handle made by the process of
claim 25.